

**Oklahoma Fixture Company and Brian K. Hopkins
Carpenters' Local Union No. 943, United Brother-
hood of Carpenters and Joiners of America,
AFL-CIO and Brian K. Hopkins. Cases 17-
CA-15383 and 17-CB-3993**

January 8, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On August 27, 1991, Administrative Law Judge Richard J. Boyce issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Respondent Employer filed a brief in support of the judge's decision, and the Respondent Union filed exceptions and a supporting brief and a brief in response to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Carpenters' Local Union No. 943, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Tulsa, Oklahoma, its officers, agents, and representatives, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the complaint in Case 17-CA-15383 is dismissed.

¹ The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The correct citation to *Teamsters Local 439 (Shippers Imperial)* is 281 NLRB 255 (1986).

Francis A. Molenda, Esq., for the General Counsel.

Stephen L. Andrew, Esq., of Tulsa, Oklahoma, for Respondent Company.

Thomas F. Birmingham, Esq., of Tulsa, Oklahoma, for Respondent Union.

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge. I heard this consolidated matter in Tulsa, Oklahoma, on June 20, 1991.

The consolidated complaint, based on charges filed by Brian K. Hopkins, acting in his individual capacity,¹ issued on March 13, 1991. It alleges that Carpenters' Local Union No. 943, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Union) violated Section 8(b)(1)(A) of the National Labor Relations Act (Act) on or about December 5, 1990, by threatening Hopkins with job loss unless he tendered membership fees and dues when he was under no obligation to do so; and that the Union violated Section 8(b)(2) on about December 6 by requesting that Oklahoma Fixture Company (Company) discharge Hopkins for reasons other than his failure to tender lawfully required fees and dues.

The complaint further alleges that the Company violated Section 8(a)(3) and (1) on about December 6 by discharging Hopkins in compliance with the Union's request.

I. JURISDICTION, LABOR ORGANIZATION

The Company, located in Tulsa, is engaged in the manufacture and nonretail sale of store fixtures and related products. The complaint alleges, the answer admits, and I find that it is an employer engaged in and affecting commerce within Section 2(2), (6), and (7) of the Act.

The pleadings also agree and I find that the Union is a labor organization within Section 2(5) of the Act.

II. THE ALLEGED MISCONDUCT

A. Evidence

Hopkins began with the Company, as a helper, on September 4, 1990. His hourly wage was \$4.42. As alleged, he was discharged at the Union's behest on December 6.

Hopkins was subject to a collective-bargaining contract between the Company and the Union.² The contract runs from July 1, 1989, through November 30, 1992, and includes a union-security clause stating in relevant part (art. 2, sec. 2.1):

It shall . . . be a condition of employment that all employees covered by this Agreement and hired on or after its effective date shall, on the ninety-first (91) day following the beginning of such employment, become and remain members in good standing of the Union.

The union-security clause further states (art. 2, sec. 2.2) that "an employee shall lose his good standing only for failure to tender periodic dues and initiation fees uniformly required of all members."

The contract also contains a checkoff provision which states in part (art. 3, sec. 3.1):

The Company agrees to deduct from the pay of all employees covered by this Agreement the dues of the

¹ The charge in Case 17-CA-15383 was filed on January 11, 1991; that in Case 17-CB-3993 on January 24.

² The contract covers some 650 employees "performing carpentry and wood working functions" at the Company's Tulsa plant.

Union and agrees to remit to the Union all such deductions, provided that the Union delivers to the Company a written authorization signed by each employee to whom this provision applies . . .

On his September 4 hire date, Hopkins and other new-hires attended an orientation session conducted by the Company's personnel director, J. R. Killough. The Union's chief steward, Carl Officer, also participated. Killough gave each attendee a "packet of information" which included the Union's standard checkoff authorization form and a 1-page document entitled "Oklahoma Fixture Co. Dues & Permit Structure." Both Killough and Officer told those present about their obligations under the union-security clause, mentioning their susceptibility to discharge for noncompliance.

The checkoff form, once signed and submitted, would "authorize" the Company "to deduct from [the employee's] regular wages an amount equal to the initiation fee and dues established by the Union and to remit such amounts to" the Union.

The document describing the dues and permit structure stated variously that the Union would charge each employee a specified permit fee at the start of his/her second and third months; that each employee was to apply for membership "after probation period of ninety (90) days," the application to be made "in person" at the union hall; that membership would entail the employee's paying a specified initiation fee and monthly dues; and that each member would "be assessed a one time \$36.00 Building Assessment fee to be paid within a 12-month period at \$9.00 per quarter." The amount of fees and dues varied by employee classification, according to the document, the rates for helpers being \$16.75 per month for both permit fees and membership dues and \$55 for initiation. The document did not address the consequences of delinquency.³

Hopkins signed and submitted a checkoff form during the orientation meeting. The Company accordingly deducted \$16.75 from his pay at the start of his second, third, and fourth months—a total of \$50.25—and forwarded it to the Union.⁴

On about November 15, Carl Officer presented Hopkins with this letter, signed by Clenton Hughes, the Union's financial secretary:

**NOTICE OF PROBATION EXPIRATION
IF NOT PAID-COULD RESULT IN YOUR
TERMINATION**

Date: Nov. 14, 1990

Dear Brian Keith Hopkins

This notice is to inform you that as of 12-04-1990 your ninety days of probation will expire in accordance

³I am unable to find any reference to permit fees in the contract. Sec. 45C of the constitution of the Union's parent International authorizes any affiliated local union to "establish working dues, . . . supplemental work dues or work fees payable to the Local Union . . . by members working in its jurisdiction."

⁴During the hearing, the Union offered to refund the \$16.75 collected at the start of the fourth month in light of Hopkins' discharge about the same time.

with Article 2, Section 1, 2 and 3 of the Collective Bargaining Agreement.⁵

You are hereby notified that as of 12-04-1990 you owe a total of \$64.00 which was calculated as follows:

Building Assessment \$9.00
Initiation Fee \$55.00

You may pay between 8:00 A.M. and 4:30 P.M. at
8220 East Skelly Drive, Tulsa, Oklahoma 74129.

Hopkins testified that Officer said little when proffering the letter; that he "just handed it to me and told me that the amount listed was the amount that I was supposed to pay at the end of my probationary period." Officer testified, on the other hand: "I took this letter to him, read it to him, explained it to him, asked him if he had any questions, he did not."⁶

Hopkins testified that Officer next spoke to him on December 5, while he cleaned a restroom. He recounted their exchange this way:

He told me that I needed to get down to the union office and pay my initiation fee or I would be terminated. I told him that . . . I didn't have transportation, but I had the amount that was needed to pay my union initiation fee. I also asked him if there was a way that I could pay the fee from being there at the plant, and he told me I couldn't because there was some forms that I had to go in and sign myself, and therefore I had to go to the union office myself and pay in person.

Hopkins further testified that Officer recommended that he "at least call" Hughes if he "had any trouble paying" the fee.

Officer's version of this conversation corresponds with Hopkins' in major detail. He admittedly reminded Hopkins that the Hughes letter he gave Hopkins in mid-November "said that he could be terminated if he does not take care of his business."⁷

Officer testified that he never collects fees or dues himself. He explained, "I don't want no conflict where they say I've collected money and didn't pay it."

Hopkins did not make tender, nor did he see or call Hughes.⁸

⁵Art. 2 of the agreement does not contain a section 3. This presumably is an old form.

⁶Observing that "a lot of employees . . . can't read," Officer testified, "I just make it a habit to read it to all of them." Hopkins is literate.

⁷Hopkins to the contrary, Officer testified that he also spoke with Hopkins on December 4. The encounter took place "in the breeze-way between the buildings," according to Officer, and he "reminded [Hopkins] that he had to go down that evening and join the Union." Officer testified that he "explained . . . that it was a Tuesday night and the financial secretary [Hughes] . . . stays late on Tuesdays"; and that Hopkins rejoined that he "had the money in his pocket . . . [and] . . . was going down that evening."

⁸While Hopkins' checkoff form, by its terms, authorized the Company "to deduct . . . an amount equal to the initiation fee and dues . . . and to remit such amounts to" the Union (emphasis added), the checkoff provision in the contract applies only to "the dues of the Union." Hughes testified that this is the Union's first contract with the Company to have a checkoff provision; and that the Union had

On December 6, Hughes hand-delivered this letter to the Company's vice president, Mark Cavins:

This notice is to inform Oklahoma Fixture Company that the following employee has not complied with Article 2, Section 2.1, 2.2 of the Collective Bargaining Agreement between Local 943 and Oklahoma Fixture Company.

You are requested to discharge this employee until such time as he complies with Article 2, Section 2.1, 2.2.

BRIAN KEITH HOPKINS

At the end of Hopkins' shift on December 6, Officer escorted him to the personnel office, where Killough asked if he had paid his initiation fee. Hopkins said no, and Killough advised him orally and by letter that he was terminated. The letter:

To: BRIAN HOPKINS

Date: December 6, 1990

This letter is to inform you that your employment with Oklahoma Fixture Company has terminated for not complying with Article 2, Section 2.1, 2.2 of the Collective Bargaining Agreement between Oklahoma Fixture Company and Carpenter's [sic] Local Union 943 which states that all employees must join the union after their probationary period is up.

Hopkins testified that he told Killough, during this meeting, that he "couldn't make it" to the union office because he "didn't have transportation." He testified that he also informed Killough that he had told Officer he had "the amount that was needed . . . and . . . asked him if there was any kind of way . . . [to] . . . pay from being there at the job." Killough testified that he could not recall Hopkins' offering this or any other reason for nonpayment.

Officer, although witness to the discharge conversation, did not render his account.

Hughes testified that "the main reason" he demanded the discharge was that Hopkins "didn't make any contact with [him] whatsoever or try to make any arrangements"; that he would not have delivered the letter had Hopkins "made some arrangements over the telephone"; and that all Hopkins "had to do was communicate with" him.

Hughes also testified that, if an employee's 91st day should fall between paydays, he will "give them usually, if they contact [him] and talk to [him] . . . until the next payday." He further testified that, had Hopkins tendered \$25 on his 91st day, arranging to pay the \$30 balance on the payday weeks hence, he would not have made the discharge demand.⁹

Hughes testified, finally, that the Union cannot demand, and has never demanded, that an employee be discharged for

sought in negotiations to extend its embrace to both initiation fees and dues, but the Company "didn't go that far with us."

⁹Hughes elaborated: "I would have let him come down there like anybody else and put the money in an envelope, and I would have held it until the next installment that he was going to make, which is . . . the next payday, and . . . he would then . . . make his [membership] application."

failing to pay the building assessment, as opposed to the initiation fee. The record contains no evidence, however, that the Union ever explained this distinction to Hopkins.

B. Conclusions

Quoting from *Carpenters Local 455 (Building Contractors)*, 271 NLRB 1099 (1984), at 1099:

The Board presumes that a union's attempts to cause an employee's discharge are unlawful. . . . A union may rebut this presumption by showing that such attempts were made pursuant to a valid union-security clause.

The facial validity of the present union-security clause is not questioned. But, Section 8(b)(2) of the Act precludes a union from causing or attempting to cause a discharge pursuant to a union-security clause for a reason other than the employee's "failure to tender the *periodic* dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." (Emphasis added.)

From all objective evidence—most notably the Hughes letter Officer served on Hopkins in mid-November and Officer's reference to that letter when warning Hopkins on December 5 that he "could be terminated"—the Union treated the one-time building assessment as a part of Hopkins' obligation under the union-security clause.¹⁰ Such assessments are not "periodic" within the meaning of Section 8(b)(2). I conclude, therefore, that the Union violated that section, and derivatively Section 8(a)(1)(A), by attempting to cause and causing the Company to discharge Hopkins. *Teamsters Local 439 (Shippers Imperial)*, 281 NLRB 244 (1986); *Carpenters Local 455 (Building Contractors)*, supra.¹¹

I further conclude that the Union restrained or coerced Hopkins in violation of Section 8(b)(1)(A) both when Officer gave Hughes' letter to him and when Officer told him on December 5 that he faced discharge unless he complied with the letter.

I am unable to conclude, however, that the Company violated Section 8(a)(3) and (1) by complying with the Union's discharge demand. Section 8(a)(3) contains a proviso stating that

[N]o employer shall justify any discrimination against an employee for nonmembership in a labor organization . . . (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Thus, extracting from *Valley Cabinet & Mfg.*, 253 NLRB 98, 99 (1980), an employer violates the Act in this regard

¹⁰I do not regard as probative Hughes' self-serving testimony that the Union cannot demand, and has never demanded, that an employee be discharged for failing to pay the building assessment.

¹¹That Hughes sometimes entered into informal arrangements with delinquent employees, thereby sparing them from discharge, is not an added ground for finding a violation. "[T]he failure to treat all delinquents alike does not necessarily bar invocation of the union-security clause against particular individuals." *Zoe Chemical Co.*, 160 NLRB 1001, 1018 (1966). See also *North American Refractories Co.*, 100 NLRB 1151, 1155 (1952).

only when it discharges an employee at the request of the union when it has "reasonable grounds for believing" that the request was unlawful.

The Union's discharge request gave no hint of impropriety, and Killough confirmed through Hopkins that he had not made tender before discharging him. Crediting Hopkins that he told Killough that he had told Officer if he had "the amount that was needed" and asked Officer if "there was any kind of way" he could pay without going to the union office, that did not engender "reasonable grounds for believing" the request improper. See generally *R. H. Macy & Co.*, 266 NLRB 858, 859, 868-869 (1983); *Western Publishing Co.*, 263 NLRB 1110, 1113 (1982); *Valley Cabinet & Mfg.*, supra at 253 NLRB 99; *Conductron Corp.*, 183 NLRB 419, 427-429 (1970).

CONCLUSIONS OF LAW

1. The Union violated Section 8(b)(2) and (1)(A) of the Act by attempting to cause and causing the Company to discharge Hopkins on December 6, 1990, for failing to pay an amount consisting in part of a building assessment.

2. The Union further violated Section 8(b)(1)(A) in mid-November 1990 and again on December 5, 1990, when it informed Hopkins that he faced discharge unless he paid an amount consisting in part of a building assessment.

3. The Company did not violate Section 8(a)(3) by complying with the Union's request to discharge Hopkins.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

ORDER

The Respondent, Carpenters' Local Union No. 943, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Attempting to cause or causing Oklahoma Fixture Company to discharge or otherwise discriminate against Brian K. Hopkins or any other employee for failing to pay to the Union an amount consisting in part of a building assessment.

(b) Threatening Brian K. Hopkins or any other employee with discharge for failing to pay to the Union an amount consisting in part of a building assessment.

(c) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as permitted by Section 8(a)(3) of the Act.

2. Take this affirmative action necessary to effectuate the policies of the Act.

¹² Outstanding motions inconsistent with this recommended Order are denied. If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Make Brian K. Hopkins whole, with interest, for any loss of earnings he may have suffered as a result of the discrimination against him.¹³

(b) Notify Oklahoma Fixture Company in writing, with a copy to Hopkins, that it has no objection to the employment of Hopkins and requests that he be reinstated.

(c) Expunge from its records any reference to the unlawful discharge of Hopkins and notify him in writing that this has been done and that evidence of said discharge will not form a basis, in whole or part, for future action against him.

(d) Post at its business office copies of the attached notice, marked "Appendix."¹⁴ Copies of said notice, on forms provided by the Regional Director for Region 17, after being signed by the Union's authorized representative, shall be posted by the Union immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members customarily are posted. The Union shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Forward a sufficient number of signed copies of the notice to the Regional Director for Region 17 for posting by Oklahoma Fixture Company, at its plant in Tulsa, Oklahoma, in places where notices to employees customarily are posted, if the Company is willing.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the allegation is dismissed that the Company, Oklahoma Fixture Company, violated Section 8(a)(3) and (1) by complying with the Union's request that it discharge Hopkins.

¹³ Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

¹⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT attempt to cause or cause Oklahoma Fixture Company to discharge or otherwise discriminate against Brian K. Hopkins or any other employee for failing to pay to us an amount consisting in part of a building assessment.

WE WILL NOT threaten Brian K. Hopkins or any other employee with discharge for failing to pay us an amount consisting in part of a building assessment.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed by Section 7 of the Act, except to the extent that such rights may

be affected by an agreement requiring membership in a labor organization as a condition of employment as permitted by Section 8(a)(3) of the Act.

WE WILL make Brian K. Hopkins whole, with interest, for any loss of earnings he may have suffered as a result of the discrimination against him.

WE WILL notify Oklahoma Fixture Company in writing, with a copy to Hopkins, that we have no objection to the employment of Hopkins and WE WILL request that he be reinstated.

WE WILL expunge from our records any reference to the unlawful discharge of Hopkins and WE WILL notify him in writing that this has been done and that evidence of said discharge will not form a basis, in whole or part, for future action against him.

CARPENTERS' LOCAL UNION No. 943, UNITED
BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, AFL-CIO